

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
McALLEN DIVISION

GUADALUPE AND ALICIA
RODRIGUEZ

VS.

BURLINGTON INSURANCE COMPANY §
AND ABERCROMBIE, SIMMONS & §
GILLETTE, INC. §

CIVIL ACTION NO. _____

INDEX OF MATTERS BEING FILED

1. 93rd District Court Case Summary;
2. Plaintiffs' Original Petition and Request for Disclosure e-filed on March 27, 2014, on behalf of Plaintiffs;
3. Mediator's Statement e-filed on August 27, 2015;
4. Plaintiff's, Pedro Gutierrez, Notice of Non-Suit;
5. Agreed Order of Dismissal of Pedro Gutierrez's Claims with Prejudice and Severance e-filed on August 27, 2015 and signed on September 1, 2015; and
6. Original Answer of Defendant The Burlington Insurance Company e-filed on December 21, 2015.

Undersigned counsel hereby certifies that the above constitutes the entire State Court's record, as represented by the Clerk of Court, State Court of Hidalgo County, State of Texas.

Respectfully submitted,

By: 

TOM LOCKHART

tlockhart@adamsgraham.com

State Bar No. 12473500

Fed. I.D. No. 2257

BARRY RAY

bray@adamsgraham.com

State Bar No. 16606355

Fed. I.D. No. 15705

ADAMS & GRAHAM, L.L.P.

134 E. Van Buren, Suite 301 - 78550

P. O. Drawer 1429

Harlingen, Texas 78551-1429

Telephone: (956) 428-7495

Facsimile: (956) 428-2954

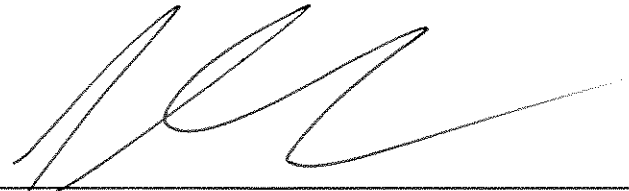
Attorneys for *Defendant* BURLINGTON INSURANCE
COMPANY

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the above and foregoing document was forwarded on this 21st day of December, 2015, to the following counsel of record:

Aloysius Peter Thaddeus, Jr.
Vicente Gonzalez
V. GONZALEZ & ASSOCIATES, P.C.
121 N. 10th St.
McAllen, Texas 78501
Attorneys for Plaintiffs

Via Email



TOM LOCKHART

Civil Action No. _____
Guadalupe and Alicia Rodriguez v. Burlington
Insurance Company and Abercrombie, Simmons & Gillette, Inc.

TAB 1

to

TO INDEX OF MATTERS BEING FILED

CASE SUMMARY

CASE No. C-2717-14-B

Pedro Gutierrez, Guadalupe Rodriguez, Alicia Rodriguez
VS.
The Burlington Insurance Company, Abercrombie,
Simmons, & Gillette, Inc.

§
§
§
§

Location: 93rd District Court
Judicial Officer: Delgado, Rodolfo "Rudy"
Filed on: 03/27/2014

CASE INFORMATION

Related Cases

C-2717-14-B(1) (Related Case)

Contract -

Case Type: Consumer/Commercial/Debt
(OCA)

Subtype: Hail Storm 2012 - 93rd

DATE

CASE ASSIGNMENT

Current Case Assignment

Case Number C-2717-14-B
Court 93rd District Court
Date Assigned 03/27/2014
Judicial Officer Delgado, Rodolfo "Rudy"

PARTY INFORMATION

Plaintiff

Gutierrez, Pedro

Lead Attorneys

THADDEUS, A. PETER, Jr.
Retained
956-630-3266(W)

Rodriguez, Alicia

THADDEUS, A. PETER, Jr.
Retained
956-630-3266(W)

Rodriguez, Guadalupe

THADDEUS, A. PETER, Jr.
Retained
956-630-3266(W)

Defendant

Abercrombie, Simmons, & Gillette, Inc.

The Burlington Insurance Company

LOCKHART, TOM
Retained
956-428-7495(W)

DATE

EVENTS & ORDERS OF THE COURT

INDEX

12/21/2015



Answer

Original Answer of Defendant The Burlington Insurance Company

09/02/2015



Notice Sent

AGREED ORDER OF DISMISSAL OF PEDRO GUTIERREZ CLAIMS W. PREJUDICE & SEVERANCE, CC: TO ALL PARTIES

09/01/2015

Agreed Order of Dismissal (Judicial Officer: Reyna, Rose G.)

Party (Gutierrez, Pedro)

AGREED ORDER OF DISMISSAL OF PEDRO GUTIERREZ'S CLAIMS WITH PREJUDICE & SEVERANCE

09/01/2015



Order of Dismissal with Prejudice, Signed




Agreed Order of Dismissal of Pedro Gutierrez's Claim with Prejudice and Severance

08/31/2015

E-Filing Forwarded to Court Queue

AGREED ORDER OF DISMISSAL OF PEDRO GUTIERREZ'S CLAIMS WITH PREJUDICE

CASE SUMMARY
CASE NO. C-2717-14-B

	<i>AND SEVERANCE</i>	
08/27/2015	 Notice <i>Plaintiff, Pedro Gutierrez, Notice of Non-Suit</i>	
09/11/2014	 Notice <i>Mediators Statement</i>	
04/03/2014	Citation By Certified Mail The Burlington Insurance Company Unserved Abercrombie, Simmons, & Gillette, Inc. Unserved	
03/27/2014	 Original Petition (OCA) <i>Original Petition</i>	
DATE	FINANCIAL INFORMATION	

Defendant The Burlington Insurance Company

Total Charges	6.00
Total Payments and Credits	6.00
Balance Due as of 12/21/2015	0.00

Other Denham, Alfred T.

Total Charges	2.00
Total Payments and Credits	2.00
Balance Due as of 12/21/2015	0.00

Plaintiff Gutierrez, Pedro

Total Charges	372.00
Total Payments and Credits	372.00
Balance Due as of 12/21/2015	0.00

DATE 12/21/2015
 A true copy I certify
 LAURA HINOJOSA
 District Clerk, Hidalgo County, Texas
 By [Signature] Deputy #35

Civil Action No. _____
Guadalupe and Alicia Rodriguez v. Burlington
Insurance Company and Abercrombie, Simmons & Gillette, Inc.

TAB 2

to

TO INDEX OF MATTERS BEING FILED

	CAUSE NO.	C-2717-14-B
PEDRO GUTIERREZ AND	§	IN THE DISTRICT COURT
GUADALUPE AND ALICIA	§	
RODRIGUEZ	§	
<i>Plaintiffs,</i>	§	
vs.	§	_____ JUDICIAL DISTRICT
	§	
THE BURLINGTON INSURANCE	§	
COMPANY AND ABERCROMBIE,	§	
SIMMONS & GILLETTE, INC.	§	HIDALGO COUNTY, TEXAS
<i>Defendant</i>	§	

PLAINTIFF'S ORIGINAL PETITION AND REQUEST FOR DISCLOSURE

TO THE HONORABLE JUDGE OF SAID COURT:

NOW COMES, PEDRO GUTIERREZ AND GUADALUPE AND ALICIA RODRIGUEZ (hereinafter referred to as ("PLAINTIFFS")), and files their first Original Petition against DEFENDANTS, THE BURLINGTON INSURANCE COMPANY AND ABERCROMBIE, SIMMONS & GILLETTE, INC. for cause of action would respectfully show the Court the following:

I. Discovery

Pursuant to rule 190 of the Texas Rules of Civil Procedure, PLAINTIFFS intend to conduct discovery under Level 3.

II. Service of Process

Defendant, THE BURLINGTON INSURANCE COMPANY, may be cited with process at: David A. Macleod, 238 International Road Burlington, NC 27215-5129.

Defendant, ABERCROMBIE, SIMMONS & GILLETTE, INC. may be cited with process at: Mike Swinney, P.O. Box 2692, McAllen, TX 78502.

DATE 12/21/2015
 A true copy I certify
 LAURA HINOJOSA
 District Clerk, Hidalgo County, Texas
 By [Signature] Deputy #35

C-2717-14-B

THE BURLINGTON INSURANCE COMPANY is in the business of insurance in the State of Texas. The insurance business done by THE BURLINGTON INSURANCE COMPANY in Texas includes, but is not limited to the following:

1. The making and issuing of contracts of insurance with the PLAINTIFFS;
2. The taking or receiving of application for insurance, including the PLAINTIFFS' application for insurance;
3. The receiving or collection of premiums, commissions, membership fees, assessments, dues or other consideration for any insurance or any part thereof, including any such consideration or payments from the PLAINTIFFS;
4. The issuance or delivery of contracts of insurance to residents of this state or a person authorized to do business in this state, including the PLAINTIFFS;
5. The adjusting and inspection of PLAINTIFFS' insurance claims;
6. Making insurance coverage decisions;
7. Taking part in making insurance coverage decisions; and
8. Making representations to PLAINTIFFS as being an agent for an insurance company with authority to make coverage decisions;

III. Jurisdiction and Venue

Venue of this action is proper in HIDALGO County, Texas because: the policy at issue was issued and delivered in HIDALGO County, Texas; the property insured is situated in HIDALGO County, Texas; PLAINTIFFS' losses occurred in HIDALGO

C-2717-14-B

County, Texas, and all or part of the events made the basis of this lawsuit and giving rise to PLAINTIFFS' claims and causes of action occurred in HIDALGO County, Texas.

IV. Facts

THE BURLINGTON INSURANCE COMPANY AND ABERCROMBIE, SIMMONS & GILLETTE, INC. and/or its agents committed the actions alleged against PLAINTIFFS in this complaint. PLAINTIFFS own the property located at: PEDRO GUTIERREZ: 1710 E. 21st Mission, Texas, Policy# 078B002901, GUADALUPE AND ALICIA RODRIGUEZ: 218 Garfield Ave., San Juan, Texas, Policy#: 019B024830. THE BURLINGTON INSURANCE COMPANY provided coverage to the PLAINTIFFS for such building, personal property, and other matters. During the term of said policy, PLAINTIFFS sustained covered losses in the form of multiple windstorm/hailstorm events including the hail storms of March 29 and April 20, 2012 in Hidalgo County, and water damages resulting there from, including damage to the architectural finishes of the property. PLAINTIFFS promptly reported losses to THE BURLINGTON INSURANCE COMPANY pursuant to the terms of the insurance policy. As a result, PLAINTIFFS property sustained damage, including the cost of destruction and restoration of the property necessary to access and fix the damaged areas. These are covered damages under PLAINTIFFS' insurance policy with THE BURLINGTON INSURANCE COMPANY. PLAINTIFFS has been damaged in an amount in excess of the minimum jurisdictional limits of this Court, including injuries sustained as a result of having conduct business during the pendency of THE BURLINGTON INSURANCE COMPANY's conduct.

V. Conditions Precedent

C-2717-14-B

All notices and proofs of loss were timely and properly given to THE BURLINGTON INSURANCE COMPANY in such manner as to fully comply with the terms and conditions of the relevant insurance policies or other contracts and applicable law. More than sixty days prior to the filing of this suit, written demand for payment and notice of complaint pursuant to Texas Insurance Code, section 541 and Business and Commerce Code section 17.505(a), was sent to THE BURLINGTON INSURANCE COMPANY. All of the conditions precedent to bring about this suit under the insurance policy have occurred. Despite the fact that all conditions precedent to PLAINTIFFS' recovery has occurred and/ or has been performed, THE BURLINGTON INSURANCE COMPANY has failed and refused to pay PLAINTIFFS a just amount in accordance with their contractual obligations, agreements, and representations.

VI. Breach of Contract

PLAINTIFFS purchased an insurance policy with THE BURLINGTON INSURANCE COMPANY. PLAINTIFFS' property was damaged by windstorm and water damage, of which are covered under the insurance policy. THE BURLINGTON INSURANCE COMPANY has denied and/or delayed payment of PLAINTIFFS' covered claims. THE BURLINGTON INSURANCE COMPANY has no reasonable basis for denying, delaying, or failing to pay PLAINTIFF'S claims for damages. THE BURLINGTON INSURANCE COMPANY knew or should have known that there was no such reasonable basis to deny, delay, and failure to pay such claims. The conduct of THE BURLINGTON INSURANCE COMPANY AND ABERCROMBIE, SIMMONS & GILLETTE, INC. was irresponsible, and unconscionable. THE BURLINGTON INSURANCE COMPANY took advantage of the PLAINTIFFS' lack of sophistication in

C-2717-14-B

insurance and construction matters to a grossly unfair degree. THE BURLINGTON INSURANCE COMPANY has, by its conduct, breached its contract with the PLAINTIFFS. The conduct of THE BURLINGTON INSURANCE COMPANY AND ABERCROMBIE, SIMMONS & GILLETTE, INC. has proximately caused the injuries and damages to the PLAINTIFFS.

VII. Second Cause of Action: DTPA Violations

PLAINTIFFS is a consumer entitled to relief under the Texas Deceptive Trade Practices—Consumer Protection Act (“DTPA”). By its conduct outlined above, THE BURLINGTON INSURANCE COMPANY AND ABERCROMBIE, SIMMONS & GILLETTE, INC. has engaged in the following violations of the DTPA which, together and separately, has been a producing cause of PLAINTIFFS’ damages:

- (a) THE BURLINGTON INSURANCE COMPANY made false representations about PLAINTIFFS’ rights, remedies and obligations under the policies at issue. These statements were a misrepresentation of the insurance policies and their benefits in violation of §§17.46(b)(5), (7), (12) and (14), Texas Business & Commerce Code;
- (b) THE BURLINGTON INSURANCE COMPANY actions constitute an unconscionable course of conduct entitling PLAINTIFFS to relief under §17.50(a)(1), (2), (3), and (4) of the Texas Business & Commerce Code;
- (c) THE BURLINGTON INSURANCE COMPANY failed to disclose information to PLAINTIFFS concerning the nature and extent of their insurance policy which was known by THE BURLINGTON INSURANCE COMPANY at the time for the purpose of inducing PLAINTIFFS into transactions which they would not

C-2717-14-B

have otherwise entered in violation of section 17.46(b)(9) and (23), Texas Business and Commerce Code;

- (d) As described above, THE BURLINGTON INSURANCE COMPANY violated Chapter 541, Texas Insurance Code, entitling PLAINTIFFS to relief under section 17.50(a)(4), Texas Business and Commerce Code.

THE BURLINGTON INSURANCE COMPANY took advantage of PLAINTIFFS' lack of knowledge in construction and insurance claims processes; misrepresented losses covered under the insurance policy, and failed to disclose pertinent information regarding damages to the PLAINTIFFS' property. THE BURLINGTON INSURANCE COMPANY AND ABERCROMBIE, SIMMONS & GILLETTE, INC. conduct as described herein was a producing cause of damages to PLAINTIFFS for which PLAINTIFFS sue. The conduct of the THE BURLINGTON INSURANCE COMPANY AND ABERCROMBIE, SIMMONS & GILLETTE, INC. was more than just a mistake and was done "knowingly" and/or "intentionally" as that term is derived by statute. Because of that, THE BURLINGTON INSURANCE COMPANY AND ABERCROMBIE, SIMMONS & GILLETTE, INC. may be subject to liability for additional damages under the Texas Deceptive Trade Practices Act. PLAINTIFFS seek an award of additional damages under the DTPA in an amount not to exceed three times the amount of economic damages.

VIII. Unfair Insurance Practices

THE BURLINGTON INSURANCE COMPANY AND ABERCROMBIE, SIMMONS & GILLETTE, INC. failed to inform PLAINTIFFS of material facts such as

C-2717-14-B

the true scope of damage and cost to repair. THE BURLINGTON INSURANCE COMPANY AND ABERCROMBIE, SIMMONS & GILLETTE, INC. failed to properly process claims and have misrepresented material facts to the PLAINTIFFS. THE BURLINGTON INSURANCE COMPANY AND ABERCROMBIE, SIMMONS & GILLETTE, INC. has failed to address all damage to the property and its contents causing further damage to the PLAINTIFFS. Further, THE BURLINGTON INSURANCE COMPANY AND ABERCROMBIE, SIMMONS & GILLETTE, INC. have intentionally failed to fully investigate the loss; failed to properly convey all information to PLAINTIFFS; and have intentionally ignored damages to the dwelling. PLAINTIFFS' property suffered from covered losses and damages of which THE BURLINGTON INSURANCE COMPANY AND ABERCROMBIE, SIMMONS & GILLETTE, INC. are fully aware. THE BURLINGTON INSURANCE COMPANY AND ABERCROMBIE, SIMMONS & GILLETTE, INC. has concealed damage known by them to exist. THE BURLINGTON INSURANCE COMPANY AND ABERCROMBIE, SIMMONS & GILLETTE, INC. has known about covered windstorm and water damages but has failed to perform proper testing and concealed facts from PLAINTIFFS about the damages, ignoring PLAINTIFFS' pleas for help. THE BURLINGTON INSURANCE COMPANY AND ABERCROMBIE, SIMMONS & GILLETTE, INC. has failed to warn PLAINTIFFS of consequential damage to their property.

By its conduct outlined above, THE BURLINGTON INSURANCE COMPANY committed unfair practices in the business of insurance prohibited by Chapter 541, Texas Insurance Code, and the statutes, rules and regulations incorporated therein. THE

C-2717-14-B

BURLINGTON INSURANCE COMPANY AND ABERCROMBIE, SIMMONS & GILLETTE, INC. committed the following acts in violation of Texas Insurance Code and Texas Administrative Code:

- (1) THE BURLINGTON INSURANCE COMPANY failed to, with good faith, effectuate a prompt, fair, and equitable settlement of the PLAINTIFFS claims once liability became reasonable clear (Tex. Ins. Code Ann. 541.060(a)(2)(A); Tex. Ins. Code Ann. 542.003(b)(4); 28 TAC section 21.203(4));
- (2) THE BURLINGTON INSURANCE COMPANY failed to provide promptly to PLAINTIFFS a reasonable explanation of the basis in the policy, in relation to the facts or applicable law, for denial of the claim or for the offer of a compromise settlement of the claim (Tex. Ins. Code Ann. 541.060(a)(3); 28 TAC section 21.203(9));
- (3) THE BURLINGTON INSURANCE COMPANY refused to pay a claim without conducting a reasonable investigation with respect to that claim (Tex. Ins. Code Ann. 541.060(a)(7); TAC section 21.203(15));
- (4) THE BURLINGTON INSURANCE COMPANY breached its duty of good faith and fair dealing at common law;
- (5) THE BURLINGTON INSURANCE COMPANY failed within a reasonable time to affirm or deny coverage of a claim to a policyholder (Tex. Ins. Code Ann. 541.060(a)(4)(A); 28 TAC section 21.203(10));
- (6) THE BURLINGTON INSURANCE COMPANY failed to adopt and implement reasonable standards for the prompt investigation of claims arising under the

C-2717-14-B

insurer's policies (Tex. Ins. Code Ann. 542. 003(b)(3); 28 TAC section 21.203(3));

(7) THE BURLINGTON INSURANCE COMPANY AND ABERCROMBIE, SIMMONS & GILLETTE, INC. compelled PLAINTIFFS to institute a suit to recover an amount due under a policy by offering substantially less than the amount ultimately recovered in a suit brought by the policyholder (Tex. Ins. Code Ann. 542.003(b)(5); 28 TAC section 21.203(6);

(8) THE BURLINGTON INSURANCE COMPANY violated the Prompt Payment of Claims Statute (28 TAC section 21.203(18));

(9) THE BURLINGTON INSURANCE COMPANY undertook to enforce a full and final release of a claim from a policyholder when only a partial payment has been made, unless the payment is a compromise settlement of a doubtful or disputed claim (Tex. Ins. Code Ann. 541.060(a)(6); 28 TAC section 21.203(13));

(10) THE BURLINGTON INSURANCE COMPANY AND ABERCROMBIE, SIMMONS & GILLETTE, INC. committed the following unfair methods of competition or deceptive acts or practices in the business of insurance in violation of Texas Insurance Code and the Texas Administrative Code by:

(a) THE BURLINGTON INSURANCE COMPANY AND ABERCROMBIE, SIMMONS & GILLETTE, INC. made, issued or circulated or caused to be made, issued or circulated an estimate, illustration, circular or statement misrepresenting with respect to the policy issued or to be issued:

(i) the terms of the policy; and/or

C-2717-14-B

- (ii) the benefits or advantages promised by the policy.
- (b) THE BURLINGTON INSURANCE COMPANY AND ABERCROMBIE, SIMMONS & GILLETTE, INC. made an untrue statement of material fact (Tex. Ins. Code Ann. 541.060(a)(1); 28 TAC section 21.203(1));
- (c) THE BURLINGTON INSURANCE COMPANY AND ABERCROMBIE, SIMMONS & GILLETTE, INC. failed to state a material fact necessary to make other statements made not misleading considering the circumstances under which statements were made; and
- (d) THE BURLINGTON INSURANCE COMPANY AND ABERCROMBIE, SIMMONS & GILLETTE, INC. made statements in a manner that would mislead a reasonably prudent person to a false conclusion of material fact.
- (e) Refusing, failing, or unreasonably delaying a settlement offer under applicable first-party coverage on the basis that other coverage may be available or that third parties are responsible for the damages suffered, except as may be specifically provided in the policy (Tex. Ins. Code Ann 541.060(a)(5); 28 TAC section 21.203(11); and
- (f) Failing to respond promptly to a request by a claimant for personal contact about or review of the claim (28 TAC section 21.203(16)).

THE BURLINGTON INSURANCE COMPANY AND ABERCROMBIE, SIMMONS & GILLETTE, INC. conduct as described herein was a producing cause of damages to PLAINTIFFS for which they sue.

C-2717-14-B**IX. Breach of the Duty of Good Faith and Fair Dealing**

From and after the time the PLAINTIFFS' claims were presented to THE BURLINGTON INSURANCE COMPANY, liability to pay the claims in accordance with the terms of insurance policies referenced above has been reasonably clear. Despite there being no basis whatsoever on which a reasonable insurance company would have relied to deny and/or delay payment for PLAINTIFFS claims, THE BURLINGTON INSURANCE COMPANY refused to accept the claims in totality and pay the PLAINTIFFS as the policy required. At that time, THE BURLINGTON INSURANCE COMPANY knew or should have known by the exercise of reasonable diligence that their liability was reasonably clear. THE BURLINGTON INSURANCE COMPANY AND ABERCROMBIE, SIMMONS & GILLETTE, INC. failed to conduct a reasonable and proper inspection of the claims and refused to rely on the true facts, resorting instead to producing faulty, incomplete and biased reasons to avoid paying a valid claim. This constitutes failing to handle or process the PLAINTIFFS' claims in good faith, an affirmative duty placed on the Defendant, as expressly stated by the Texas Supreme Court in *Vail v. Texas Farm Bureau*, 754 S.W.2d 129 at 135 (Tex. 1988). Through the actions described above, THE BURLINGTON INSURANCE COMPANY AND ABERCROMBIE, SIMMONS & GILLETTE, INC. breached its duty to deal fairly and in good faith with the PLAINTIFF. THE BURLINGTON INSURANCE COMPANY AND ABERCROMBIE, SIMMONS & GILLETTE, INC.'S breach was a proximate cause of the losses, expenses and damages suffered by the PLAINTIFFS for which they sue.

C-2717-14-B**X. Texas Insurance Code 542, Subchapter B Delay in Payment**

PLAINTIFFS gave prompt notice of their claims to THE BURLINGTON INSURANCE COMPANY. THE BURLINGTON INSURANCE COMPANY has engaged in unfair settlement claims practices as discussed above and denied and/or has delayed payment on PLAINTIFFS' claims. THE BURLINGTON INSURANCE COMPANY reliance on reports and estimates from its adjusters and investigating adjusters has been "merely pretextual" and unreasonable. THE BURLINGTON INSURANCE COMPANY AND ABERCROMBIE, SIMMONS & GILLETTE, INC.'S investigation and use of adjusters' reports was an "outcome oriented investigation.". THE BURLINGTON INSURANCE COMPANY failed to comply with the requirements of Chapter 542 listed herein:

- (a) Failing to notify PLAINTIFFS in writing, within 15 business days after receiving all of the items, statements, and forms required by the insurer to secure final proof of loss, of the acceptance or rejection of a claim; and/or
- (b) Failing to pay PLAINTIFFS claim within 60 days of receiving all of the items, statements, and forms required by the insurer to secure final proof of loss, of the acceptance or rejection of a claim; and
- (c) Failing to request all of the items, statements and forms the Defendant reasonably believed at the time would be required from PLAINTIFFS to pay the claim within 15 days after receiving notice of the claim.

Pursuant to Texas Insurance Code Chapter 542, Subchapter B, PLAINTIFFS are entitled to recover from THE BURLINGTON INSURANCE COMPANY AND

C-2717-14-B

ABERCROMBIE, SIMMONS & GILLETTE, INC. the statutory penalty of 18% per annum on all amounts due on PLAINTIFFS' claims, together with attorney's fees, for which they sue.

XI.

PLAINTIFFS allege that as to any terms, conditions, notices, or requests under the insurance contract, PLAINTIFFS has substantially complied and/or is excused. In the alternative, PLAINTIFFS make the allegation of waiver and/or estoppel as to every defense or exclusion plead by THE BURLINGTON INSURANCE COMPANY AND ABERCROMBIE, SIMMONS & GILLETTE, INC. as to any exclusion, condition, or defense pled by THE BURLINGTON INSURANCE COMPANY AND ABERCROMBIE, SIMMONS & GILLETTE, INC., PLAINTIFFS would show that:

1. The clear and unambiguous language of the policy provides coverage for dwelling damage caused by windstorm and water damage, including the cost of access to fix the damaged areas. Any other construction of the language of the policy is void as against public policy;
2. Any other construction and its use by THE BURLINGTON INSURANCE COMPANY violates section 541 and 542 of the Texas Insurance Code and are void as against public policy;
3. Any other construction violates Art. 17.50 of the Texas Business and Commerce Code, is unconscionable, was procured by fraudulent inducement, and is void as against public policy;
4. Any other construction is otherwise void as against public policy, illegal, and violates state law and administrative rule and regulation;

C-2717-14-B

penalties, and prejudgment and post judgment interest, including judgment for additional damages and punitive damage under the facts set forth in this or any amended pleading in exceeding the minimal jurisdictional limits of the court.

XIII. JURY DEMAND

PLAINTIFFS request this Court empanel a jury to sit in the trial of this matter. The requisite jury fee will be paid as required by law.

XIV. REQUEST FOR DISCLOSURE

Under Texas Rule of Civil Procedure 194, PLAINTIFFS request that THE BURLINGTON INSURANCE COMPANY AND ABERCROMBIE, SIMMONS & GILLETTE, INC. disclose, within 50 days of the service of this request, the information or material described in Texas Rule of Civil Procedure 194.

Respectfully submitted,

V. GONZALEZ & ASSOCIATES, P.C.
121 N. 10th St.
McAllen, Texas 78501
Telephone: (956) 630-3266
Facsimile: (956) 630-0383

/s/ Aloysius Peter Thaddeus, Jr.
ALOYSIUS PETER THADDEUS, JR.
peter@vgonzalezlaw.com
State Bar No. 19819500
VICENTE GONZALEZ
State Bar No. 00798215
PAPE MALICK DJIBA
mdjiba@vgonzalezlaw.com
State Bar No. 24087430
ATTORNEYS FOR PLAINTIFF

CIVIL CASE INFORMATION SHEET

C-2717-14-B

CAUSE NUMBER (FOR CLERK USE ONLY):

COURT (FOR CLERK USE ONLY):

STYLED Pedro Gutierrez and Guadalupe Alicia Rodriguez v. The Burlington Insurance Company and Abernethy, Simmons, & Gillette, Inc.
 (e.g., John Smith v. All American Insurance Co.; In re Mary Ann Jones; In the Matter of the Estate of George Jackson)

A civil case information sheet must be completed and submitted when an original petition or application is filed to initiate a new civil, family law, probate, or mental health case or when a post-judgment petition for modification or motion for enforcement is filed in a family law case. The information should be the best available at the time of filing.

1. Contact information for person completing case information sheet:		Names of parties in case:		Person or entity completing sheet is:	
Name: <u>Oliveras Pedrothaddeus, Jr.</u> Email: <u>pedro@gonzalezlaw.com</u> Address: <u>121 N. 10th St.</u> Telephone: <u>630-3260</u> City/State/Zip: <u>McAllen, TX 78501</u> Fax: <u>630-0383</u> Signature: <u>[Signature]</u> State Bar No: <u>081919500</u>		Plaintiff(s)/Petitioner(s): <u>Pedro Gutierrez and Guadalupe Alicia Rodriguez</u> Defendant(s)/Respondent(s): <u>The Burlington Insurance Company and Abernethy, Simmons, & Gillette, Inc.</u>		<input checked="" type="checkbox"/> Attorney for Plaintiff/Petitioner <input type="checkbox"/> Pro Se Plaintiff/Petitioner <input type="checkbox"/> Title IV-D Agency <input type="checkbox"/> Other: _____	
				Additional Parties in Child Support Case: Custodial Parent: _____ Non-Custodial Parent: _____ Presumed Father: _____	
[Attach additional page as necessary to list all parties]					
2. Indicate case type, or identify the most important issue in the case (select only 1):					
Civil			Family Law		
Contract <input type="checkbox"/> Debt/Contract <input checked="" type="checkbox"/> Consumer/DTPA <input type="checkbox"/> Debt/Contract <input type="checkbox"/> Fraud/Misrepresentation <input type="checkbox"/> Other Debt/Contract: _____ Foreclosure <input type="checkbox"/> Home Equity—Expedited <input type="checkbox"/> Other Foreclosure <input type="checkbox"/> Franchise <input type="checkbox"/> Insurance <input type="checkbox"/> Landlord/Tenant <input type="checkbox"/> Non-Competition <input type="checkbox"/> Partnership <input type="checkbox"/> Other Contract: _____	Injury or Damage <input type="checkbox"/> Assault/Battery <input type="checkbox"/> Construction <input type="checkbox"/> Defamation Malpractice <input type="checkbox"/> Accounting <input type="checkbox"/> Legal <input type="checkbox"/> Medical <input type="checkbox"/> Other Professional Liability: <input type="checkbox"/> Motor Vehicle Accident <input type="checkbox"/> Premises Product Liability <input type="checkbox"/> Asbestos/Silica <input type="checkbox"/> Other Product Liability List Product: _____ <input type="checkbox"/> Other Injury or Damage: _____	Real Property <input type="checkbox"/> Eminent Domain/Condemnation <input type="checkbox"/> Partition <input type="checkbox"/> Quiet Title <input type="checkbox"/> Trespass to Try Title <input type="checkbox"/> Other Property: _____ Related to Criminal Matters <input type="checkbox"/> Expunction <input type="checkbox"/> Judgment Nisi <input type="checkbox"/> Non-Disclosure <input type="checkbox"/> Seizure/Forfeiture <input type="checkbox"/> Writ of Habeas Corpus—Pre-indictment <input type="checkbox"/> Other: _____	Marriage Relationship <input type="checkbox"/> Annulment <input type="checkbox"/> Declare Marriage Void Divorce <input type="checkbox"/> With Children <input type="checkbox"/> No Children Other Family Law <input type="checkbox"/> Enforce Foreign Judgment <input type="checkbox"/> Habeas Corpus <input type="checkbox"/> Name Change <input type="checkbox"/> Protective Order <input type="checkbox"/> Removal of Disabilities of Minority <input type="checkbox"/> Other: _____	Post-judgment Actions (non-Title IV-D) <input type="checkbox"/> Enforcement <input type="checkbox"/> Modification—Custody <input type="checkbox"/> Modification—Other Title IV-D <input type="checkbox"/> Enforcement/Modification <input type="checkbox"/> Paternity <input type="checkbox"/> Reciprocity (UIFSA) <input type="checkbox"/> Support Order Parent-Child Relationship <input type="checkbox"/> Adoption/Adoption with Termination <input type="checkbox"/> Child Protection <input type="checkbox"/> Child Support <input type="checkbox"/> Custody or Visitation <input type="checkbox"/> Gestational Parenting <input type="checkbox"/> Grandparent Access <input type="checkbox"/> Parentage/Paternity <input type="checkbox"/> Termination of Parental Rights <input type="checkbox"/> Other Parent-Child: _____	
Employment <input type="checkbox"/> Discrimination <input type="checkbox"/> Retaliation <input type="checkbox"/> Termination <input type="checkbox"/> Workers' Compensation <input type="checkbox"/> Other Employment: _____	Other Civil <input type="checkbox"/> Administrative Appeal <input type="checkbox"/> Antitrust/Unfair Competition <input type="checkbox"/> Code Violations <input type="checkbox"/> Foreign Judgment <input type="checkbox"/> Intellectual Property <input type="checkbox"/> Lawyer Discipline <input type="checkbox"/> Perpetuate Testimony <input type="checkbox"/> Securities/Stock <input type="checkbox"/> Tortious Interference <input type="checkbox"/> Other: _____				
Tax <input type="checkbox"/> Tax Appraisal <input type="checkbox"/> Tax Delinquency <input type="checkbox"/> Other Tax: _____	Probate & Mental Health Probate/Wills/Intestate Administration <input type="checkbox"/> Dependent Administration <input type="checkbox"/> Independent Administration <input type="checkbox"/> Other Estate Proceedings <input type="checkbox"/> Guardianship—Adult <input type="checkbox"/> Guardianship—Minor <input type="checkbox"/> Mental Health <input type="checkbox"/> Other: _____				
3. Indicate procedure or remedy, if applicable (may select more than 1):					
<input type="checkbox"/> Appeal from Municipal or Justice Court <input type="checkbox"/> Arbitration-related <input type="checkbox"/> Attachment <input type="checkbox"/> Bill of Review <input type="checkbox"/> Certiorari <input type="checkbox"/> Class Action		<input type="checkbox"/> Declaratory Judgment <input type="checkbox"/> Garnishment <input type="checkbox"/> Interpleader <input type="checkbox"/> License <input type="checkbox"/> Mandamus <input type="checkbox"/> Post-judgment		<input type="checkbox"/> Prejudgment Remedy <input type="checkbox"/> Protective Order <input type="checkbox"/> Receiver <input type="checkbox"/> Sequestration <input type="checkbox"/> Temporary Restraining Order/Injunction <input type="checkbox"/> Turnover	
4. Indicate damages sought (do not select if it is a family law case):					
<input type="checkbox"/> Less than \$100,000, including damages of any kind, penalties, costs, expenses, pre-judgment interest, and attorney fees <input type="checkbox"/> Less than \$100,000 and non-monetary relief <input type="checkbox"/> Over \$100,000 but not more than \$200,000 <input type="checkbox"/> Over \$200,000 but not more than \$1,000,000 <input type="checkbox"/> Over \$1,000,000					

DATE 12/21/2015
 A true copy I certify
 LAURA HINOJOSA

District Clerk, Hidalgo County, Texas
 By [Signature] Deputy #37

Rev 2/13

Civil Action No. _____
Guadalupe and Alicia Rodriguez v. Burlington
Insurance Company and Abercrombie, Simmons & Gillette, Inc.

TAB 3

to

TO INDEX OF MATTERS BEING FILED

CAUSE NO. C-2717-14-B

PEDRO GUTIERREZ, ET AL

VS.

THE BURLINGTON INSURANCE
COMPANY, ET AL

§
§
§
§
§
§

IN THE DISTRICT COURT

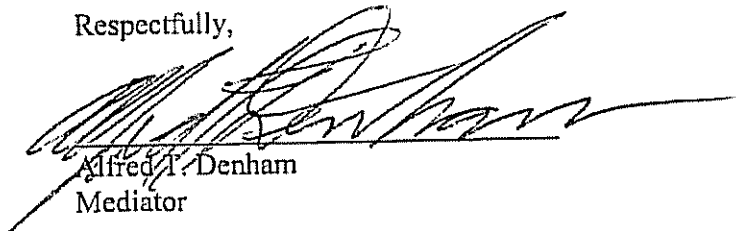
93RD JUDICIAL DISTRICT

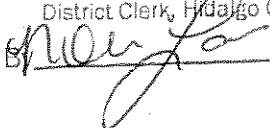
HIDALGO COUNTY, TEXAS

MEDIATOR'S STATEMENT

The above-referenced case mediated on September 9, 2014 and the case did not settle. In accordance with the Court's Orders, the date that any party (or the mediator) files this Mediator's Statement with the Court shall establish the date of "impasse".

Respectfully,


Alfred T. Denham
Mediator

DATE 12/21/2015
A true copy I certify
LAURA HINOJOSA
District Clerk, Hidalgo County, Texas
 Deputy #35

Civil Action No. _____
Guadalupe and Alicia Rodriguez v. Burlington
Insurance Company and Abercrombie, Simmons & Gillette, Inc.

TAB 4

to

TO INDEX OF MATTERS BEING FILED

CAUSE NO. C-2717-14-B

PEDRO GUTIERREZ AND
GUADALUPE AND ALICIA
RODRIGUEZ

§
§
§
§
§
§
§
§
§

IN THE DISTRICT COURT

VS.

93rd JUDICIAL DISTRICT

BURLINGTON INSURANCE COMPANY §
AND ABERCROMBIE, SIMMONS & §
GILLETTE, INC. §

HIDALGO COUNTY, TEXAS

PLAINTIFF'S, PEDRO GUTIERREZ,
NOTICE OF NON-SUIT

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW Plaintiff, **Pedro Gutierrez**, and hereby non-suits Defendants,
Burlington Insurance Company and Abercrombie, Simmons & Gillette, Inc., with
prejudice.

Respectfully submitted,

V. GONZALEZ & ASSOCIATES, P.C.

121 N. 10th St.

McAllen, Texas 78501

Telephone: (956) 630-3266

Telecopier: (956) 630-0383

By: 

ALOYSIUS PETER THADDEUS, JR.

State Bar No. 19819500

email: peter@vgonzalezlaw.com

ATTORNEYS FOR PLAINTIFF
PEDRO GUTIERREZ

DATE 12/21/2015

A true copy I certify

LAURA HINOJOSA

District Clerk, Hidalgo County, Texas

By  Deputy #35

Civil Action No. _____
Guadalupe and Alicia Rodriguez v. Burlington
Insurance Company and Abercrombie, Simmons & Gillette, Inc.

TAB 5

to

TO INDEX OF MATTERS BEING FILED

CAUSE NO. C-2717-14-B

PEDRO GUTIERREZ AND	§	IN THE DISTRICT COURT
GUADALUPE AND ALICIA	§	
RODRIGUEZ	§	
	§	
VS.	§	
	§	93 rd JUDICIAL DISTRICT
BURLINGTON INSURANCE COMPANY	§	
AND ABERCROMBIE, SIMMONS &	§	
GILLETTE, INC.	§	HIDALGO COUNTY, TEXAS

**AGREED ORDER OF DISMISSAL OF PEDRO GUTIERREZ'S
CLAIMS WITH PREJUDICE AND SEVERANCE**

WHEREAS, Plaintiff Pedro Gutierrez has filed his Notice of Non-suit with Prejudice;

IT IS THEREFORE, ORDERED, ADJUDGED and DECREED that:

1) all Plaintiff Pedro Gutierrez's claims against Defendants Burlington Insurance Company and Abercrombie, Simmons & Gillette, Inc. in the above styled and numbered suit are dismissed in their entirety with prejudice as to the refiling of same and that all taxable court costs are assessed against the party so incurring;

2) the dismissed claims are severed into a separate lawsuit which the clerk should assign as Cause No. C-2717-14-B-(1) so that this Order becomes final and appealable; and

3) the remainder of this lawsuit, Plaintiffs Guadalupe and Alicia Rodriguez's claims against Defendants the Burlington Insurance Company and Abercrombie, Simmons & Gillette, Inc., shall remain pending

DATE

12/21/2015

A true copy I certify

LAURA HINOJOSA

District Clerk, Hidalgo County, Texas

By  Deputy Clerk

**AGREED ORDER OF DISMISSAL OF PEDRO GUTIERREZ'S
CLAIMS WITH PREJUDICE AND SEVERANCE**

(Cause No. C-2717-14-B)

AGREED TO AND APPROVED:

V. GONZALEZ & ASSOCIATES, P.C.

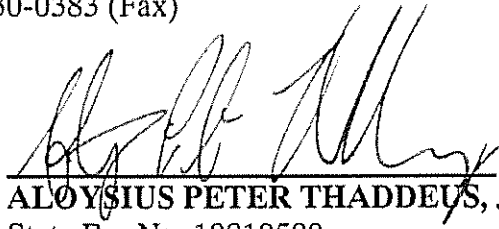
121 N. 10th St.

McAllen, TX 78501

956/630-3266 (Phone)

956/630-0383 (Fax)

By:


ALOYSIUS PETER THADDEUS, JR.
State Bar No. 19819500
peter@vgonzalezlaw.com

**ATTORNEYS FOR PLAINTIFF
PEDRO GUTIERREZ**

**AGREED ORDER OF DISMISSAL OF PEDRO GUTIERREZ'S
CLAIMS WITH PREJUDICE AND SEVERANCE**

(Cause No. C-2717-14-B)

AGREED TO AND APPROVED:


ADAMS & GRAHAM, L.L.P.

P. O. Drawer 1429

Harlingen, Texas 78551-1429

(956) 428-7495 Telephone

(956) 428-2954 Fax

By: 

TOM LOCKHART

State Bar No. 12473500

tlockhart@adamsgraham.com

**ATTORNEYS FOR DEFENDANTS
THE BURLINGTON INSURANCE
COMPANY and ABERCROMBIE,
SIMMONS & GILLETTE, INC.**

Civil Action No. _____
Guadalupe and Alicia Rodriguez v. Burlington
Insurance Company and Abercrombie, Simmons & Gillette, Inc.

TAB 6

to

TO INDEX OF MATTERS BEING FILED

CAUSE NO. C-2717-14-B

GUADALUPE AND ALICIA	§	IN THE DISTRICT COURT
RODRIGUEZ	§	
<i>Plaintiffs,</i>	§	
	§	
VS.	§	93 rd JUDICIAL DISTRICT
	§	
THE BURLINGTON INSURANCE	§	
COMPANY AND ABERCROMBIE,	§	
SIMMONS & GILLETTE, INC.	§	
<i>Defendants.</i>	§	HIDALGO COUNTY, TEXAS

**ORIGINAL ANSWER OF DEFENDANT THE BURLINGTON
INSURANCE COMPANY**

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW, THE BURLINGTON INSURANCE COMPANY ("BURLINGTON"), and files its Original Answer in response to Plaintiffs' Original Petition, and in support thereof would show the Court as follows:

I.**GENERAL DENIAL**

Burlington denies each and every material allegation in Plaintiffs' Original Petition contained, and says that the same are not true, in whole or in part, and demands strict proof thereof.

II.**SPECIFIC PLEAS AND AFFIRMATIVE DEFENSES**

A. Burlington admits the issuance of Commercial Policy Number 019B024830 for the Policy Period 04-04-2012 to 04-04-2013. **Burlington** reserves the right to amend this

Answer to assert defenses or any other applicable terms, provisions, exclusions, limitations or conditions of the Policy that may become apparent during **Burlington's** investigation and discovery.

B. Burlington by verified denial specifically denies Plaintiffs' allegations that "All notices and proofs of loss were timely and properly given" in § V. of Plaintiffs' Original Petition; absolutely no pre-suit notice of this claim was given to **Burlington**.

C. Burlington pleads the affirmative defense of bona fide dispute.

D. Burlington denies any breach of duty to the Plaintiffs with regard to the policy, investigation, handling and determination of the Plaintiffs' claims for insurance proceeds.

E. Burlington denies that it has violated any provision of the Texas Deceptive Trade Practices Act in the manner in which the subject commercial insurance was issued or in the manner in which Plaintiffs' claims for insurance proceeds were handled.

F. Burlington denies that it has violated any provision of Sections 541.060 and Sections 542.051 *et seq.* of the Tex. Ins. Code.

G. Burlington denies that the Plaintiffs are entitled to recover attorney's fees, as there has been no breach of the insurance contract issued by **Burlington** by virtue of the handling of the Plaintiffs' claims for commercial insurance benefits. In addition, **Burlington** has not violated any statutory obligation it may have to the Plaintiffs that would give rise to a claim for recovery of attorney's fees.

H. Burlington would further show that the Plaintiffs' actions brought pursuant to the Texas Insurance Code and Texas Deceptive Trade Practices Act are groundless and brought in bad faith, or in the alternative, brought for purposes of harassment. As such, the Plaintiffs are in violation of Tex. Ins. Code 541.153 and § 17.50(c) of the Texas Deceptive Trade Practices Act and **Burlington** is, therefore, entitled to recover its reasonable and necessary attorney's fees and costs in defending against these claims.

I. Burlington pleads all applicable provisions, requirements, standards and limitations set forth in Tex. Civ. Prac. & Rem. Code Chapter 41.

J. Burlington affirmatively pleads the unconstitutionality of punitive, exemplary or enhanced damages, in violation of the due process and due course of law and of equal protection provided by the Constitutions of the United States of America and the State of Texas.

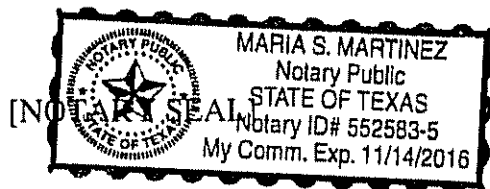
WHEREFORE, PREMISES CONSIDERED, Burlington prays that upon final hearing hereof that Plaintiffs not recover as prayed for in their Petition, that the Court award **Burlington** its attorney's fees and costs and all other relief, at law or in equity, which it may show itself justly entitled to receive.

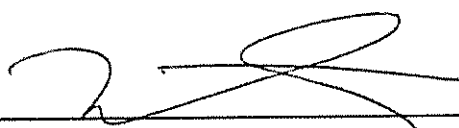
2. The factual allegations contained in ¶ II., B., in the foregoing pleading are true and correct.”



TOM LOCKHART

SWORN TO AND SUBSCRIBED before me, the undersigned authority, by the said **TOM LOCKHART**, on the 21st of December, 2015, to certify which, witness my hand and seal of office.





Notary public in and for the State of Texas

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the above and foregoing document was forwarded on this 21st day of December, 2015, to the following counsel of record:

Aloysius Peter Thaddeus, Jr.
Vicente Gonzalez
V. GONZALEZ & ASSOCIATES, P.C.
121 N. 10th St.
McAllen, Texas 78501

Via E-filing

Attorneys for Plaintiffs



TOM LOCKHART